



Federal Communications Commission
Washington, D.C. 20554

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DA 10-1780

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In re: Bangor Hydro Electric Company
Request for Renewal and Reinstatement
Call Sign WPOU273
File No. 0004298035

Dear Mr. Tilles:

On June 24, 2010, Bangor Hydro Electric Company ("Bangor") filed a waiver request¹ to file a late-filed application² for renewal of license of Microwave Industrial/Business Pool Station WPOU273, which expired on June 24, 2009. Because Bangor filed its applications more than thirty days after expiration, Bangor requests as part of its application waiver of Section 1.949(a) of the Commission's Rules³ to allow acceptance of its late-filed applications.⁴ For the reasons stated below, we deny Bangor's Waiver Request and dismiss its Renewal Application.

Bangor was the licensee of microwave industrial/business pool Station WPOU273, which is used as part of a system to monitor and control the flow of electricity in electrical sub-stations located in and around the Bangor, ME area.⁵ The license for WPOU273 was issued on June 24, 1999, and expired on June 24, 2009.⁶ Section 1.949(a) of the Commission's Rules requires licensees to file renewal applications no later than the expiration dates of licenses.⁷ Bangor failed to do so, not filing until June 24, 2010, and requesting that Section 1.949(a) of the Commission's Rules be waived to allow acceptance of Bangor's late-filed application.⁸

Bangor states that its renewal application was not timely submitted through an administrative oversight.⁹ Bangor argues that the station is part of a microwave system used to monitor and control the

¹ Waiver Request for Application for Late-Filed Renewal and Reinstatement of License, File No. 0004298035 (filed Jun. 24, 2010) (Waiver Request).

² File No. 0004298035 (filed Jun. 24, 2010) (Renewal Application).

³ 47 C.F.R. § 1.949(a).

⁴ Waiver Request at 1.

⁵ *Id.*

⁶ File No. 749218 (granted Jun. 24, 1999).

⁷ *See* 47 C.F.R. § 1.949(a).

⁸ Waiver Request at 1.

⁹ *Id.*

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flow of electricity in ten electrical sub-stations located in and around the Bangor, ME area.¹⁰ According to Bangor, the system is also used by the Central Maine Power System Operator and the Independent System Operator in Massachusetts to obtain and monitor data, and to maintain and direct the flow of electricity on the Northeast Grid.¹¹

The Commission's policy regarding reinstatement procedures in the Wireless Radio Services is as follows: Renewal applications that are filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc* if the application is otherwise sufficient under the Commission's Rules, but the licensee may be subject to an enforcement action for untimely filing and unauthorized operation during the time between the expiration of the license and the untimely renewal filing.¹² Applicants who file renewal applications more than thirty days after the license expiration date may also request renewal of the license *nunc pro tunc*, but such requests will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action, including more significant fines or forfeitures.¹³ In determining whether to reinstate a license, we consider all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance record of the licensee.¹⁴ Taking into account all the facts and circumstances of the instant matter, including the specific factors set forth by the Commission, we conclude that Bangor's late-filed renewal application should be dismissed.¹⁵

Under the Commission's rules, licensees must file renewal applications no later than the expiration date of the license for which renewal is sought.¹⁶ In fact, licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.¹⁷ Applicants may, however, file an application for renewal and request for waiver of the filing deadline if the renewal application is not filed in a timely manner. A waiver of the Commission's rules may be granted where the applicant demonstrates that (1) the underlying purpose of the rule would not be served or would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁸

¹⁰ *Id.*

¹¹ *Id.* The Northeast Grid consists of the area surrounding Bangor, ME, other areas of Maine, and sub and generator stations in three other states and a Canadian province. *Id.* at 1-2.

¹² Biennial Regulatory Review - Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485 ¶ 22 (1999) (*ULS MO&O*).

¹³ *Id.* at 11486 ¶ 22.

¹⁴ *Id.* at 11485 ¶ 22.

¹⁵ *See, e.g.*, WSYX Licensee, Inc., *Order*, 15 FCC Rcd 19084 (WTB PSPWD 2000) (denying a request for waiver of Section 1.949 of the Commission's Rules to allow submission of late-filed renewal applications after the licenses expired, and dismissing the subject applications).

¹⁶ 47 C.F.R. § 1.949(a).

¹⁷ 47 C.F.R. § 1.955(a)(1).

¹⁸ 47 C.F.R. § 1.925(b)(3).

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We do not believe that Bangor has satisfied either waiver prong. An inadvertent failure to renew a license in a timely manner is not so unique and unusual in itself as to warrant a waiver of the Commission's Rules.¹⁹ Further, each licensee is solely responsible for knowing the terms of its license and submitting a renewal application to the Commission in a timely manner.²⁰ Bangor makes no showing that the underlying purpose of the rule would not be served or would be frustrated by application to Bangor in the instant case. Nor does Bangor show how administrative oversight constitutes unique or unusual factual circumstances.²¹

Furthermore, while we note the importance of the stations in question to monitoring and controlling the flow of electricity, the nature of those operations, by themselves, does not justify a waiver. Bangor has applied for and received special temporary authority to continue operating the facilities formerly licensed under call sign WPOU273.²² If Bangor wishes to obtain a new regular authorization for this station, it may file a new, properly coordinated application.²³ In view of the foregoing, we find that grant of Bangor's requested waiver is not in the public interest.

¹⁹ See Mr. Roger Given, Vice President, Transmission and Storage Operations, Columbia Gas Transmission Company, *Letter*, 24 FCC Rcd 11769 (WTB BD 2009) (*Columbia Gas*); Fresno City and County Housing Authorities, *Order on Reconsideration*, 15 FCC Rcd 10998, 11002 ¶ 11 (WTB PSPWD 2000) (citing Plumas-Sierra Rural Electric Cooperative, *Order*, 15 FCC Rcd 5572, 5575 ¶ 9 (WTB PSPWD 2000)).

²⁰ *ULS MO&O*, 14 FCC Rcd at 11485 ¶ 21; Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, *Report and Order*, PR Docket No. 90-481, 6 FCC Rcd 7297, 7301 n.41 (1991).

²¹ *Cf. Columbia Gas, supra*; Southwest Central Rural Electric Cooperative Corporation, *Order on Reconsideration*, 16 FCC Rcd 5499, 5500 n. 7 (WTB PSPWD 2001) (licensee is responsible for failure to provide correct contact information).

²² Call Sign WQMA369, File No. 0004275965 (granted Jun. 10, 2010).

²³ See 47 C.F.R. § 101.103.

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Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the request for waiver of Section 1.949(a) of the Commission's Rules filed June 24, 2010 by Bangor Hydro Electric Company IS DENIED, and application File No. 0004298035 SHALL BE DISMISSED.

These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

Sincerely,

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Deputy Chief, Broadband Division
Wireless Telecommunications Bureau

cc: Bangor Hydro Electric Company
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